IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1434 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJARAT STATE LAND DEVELOPMENTCORPORATION LTD

Versus

CHANDUBHAI ISHWARBHAI PARMAR

Appearance:

1. Special Civil Application No. 1434 of 1999

MR HS MUNSHAW for Petitioner No. 1

MR DHIRENDRA MEHTA for PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2002

ORAL JUDGEMENT

Heard the learned advocate Mr. Munshaw for the petitioner and Mr. Dhirendra Mehta for Mr.Hathi for the respondent. By way of this petition, the petitioner has challenged the award made by the Labour court, Vadodara

in Reference (LCV) No. 255 of 1987 dated 5th October, 1998 whereby the labour court concerned has granted reinstatement in favour of the respondent workman with continuity of service. The petitioner has also been directed to pay the back wages to the respondent for 18 days each month by considering him to have remained present for the said days during the intervening period. In the event of default in implementing the award in question, the petitioner has further been directed to pay penal interest on the back wages at the rate of 18 per cent per annum with effect from 1.11.1998. This petition was admitted by this Court by issuing rule thereon on 6.3.1999.

Mr.Munshaw, the learned advocate for the petitioner has submitted that the respondent was working as daily rated wager with the petitioner and looking to the progress in the workshop, the services of the respondent workman were not required and, therefore, his services were terminated by letter dated 15th January, 1987. Thereafter, another letter of appointment dated 24th February, 1987 was issued as daily wager helper by the petitioner on the ground of requirement of work in the workshop but the respondent has not reported for work pursuant to the said order dated 24th February, 1987 and, therefore, necessary rojkam was made by the petitioner on 13th March, 1987 and yet he was not reporting for work and, therefore, since the respondent has not been reporting for work, the order offering work to the respondent has been cancelled by the petitioner by order dated 17/20th April, 1987. IN view of these submissions, according to him, the offer made by the petitioner has not been accepted by the respondent, the labour court ought not to have granted relief of reinstatement in favour of the respondent workman. He has also submitted that sufficient evidence was produced by the petitioner and the petitioner has examined one Govind Baria at Exh. 37 but that evidence has not been believed by the labour court. He has submitted that the labour court has erred in not appreciating the contentions which were raised by the petitioner. He has further submitted that the labour court has also erred in coming to the conclusion that the termination is illegal. He has submitted that the daily wager is required to work as and when the work is available and the daily wager is not entitled to work as a matter of right and, therefore, in view of this position, the labour court has erred in granting back wages even at the rate of 18 days each month during the intervening period. He has also submitted that the labour court has erred in directing to make payment of such back wages at the penal rate of interest in the

event of failure to comply with the a ward in question.

As against that, learned advocate Mr. Mehta appearing for Mr. Hathi has submitted that the respondent workman was appointed on 1st July, 1982 and worked upto 6th February, 1985 and for that, certificate has been produced by the respondent before the labour court which has been found to be proved and on that basis, he has completed 240 days' continuous work during the last 12 months preceding the date of termination and the labour court has appreciated the muster roll produced by the petitioner and has on that basis proved continuous service of the respondent and, therefore, the labour court was right in setting aside the order of termination and in granting reliefs in favour of the respondent workman. He has further submitted that the petitioner has not complied with the provisions of section 25-F of the I.D. Act, 1947. He has further submitted that the other daily rated helpers junior to the respondent were retained by the petitioner while terminating the services of the respondent and, therefore, the labour court was right in granting reliefs in favour of the respondent workman. As regards the contention raised by Mr. Munshaw that the offer made by the petitioner was not accepted by the respondent, Mr. Mehta has submitted that the respondent was not allowed to join and, therefore, the respondent was not able to resume the duty pursuant to the letter dated 24th February, 1987.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. It is an admitted fact that the respondent was engaged by the petitioner as daily rated helper with effect from 1st July, 1982 to 6th February, 1985 and thereafter also, he was continued in service which fact has been proved on the basis of the muster roll produced by the petitioner itself and, thus, it is also an admitted fact that the respondent has completed 240 days' continuous service during the last 12 months preceding the date of termination. In view of this, the petitioner ought to have complied with the provisions of section 25-F while terminating the services of the respondent workman and for want of such compliance, the labour court was right in holding that the termination is bad and illegal. All these aspects have been considered by the labour court in para 6 of the award in question at page 23 of the petition. As regards back wages, the labour court has taken into consideration the pendency of the matter before it and has granted 18 days wages each month for the intervening period. Except this, there is no further

discussion as regards back wages in the impugned award. Before the labour court, the respondent was examined at Exh. 20 and the witness for the petitioner Shri Govind D. Baria was examined at Exh. 37 and another witness for the petitioner has been examined at Exh. 30 but while considering the aspect of back wages, the labour court has not considered or discussed the evidence of the respondent as regards gainful employment. Likewise, the labour court has also not discussed the evidence of the witnesses for the petitioner and granted the back wages only on the ground that there was delay and work load and granted back wages in favour of the respondent workman. Mr. Mehta has submitted that before the labour court, the petitioner has not been cooperating for expeditious disposal of the reference. According to him, right of the petitioner to lead oral evidence and to cross examine the respondent has been closed by the labour court and, therefore, the labour court was right in awarding back wages on that ground. Apart from that, according to this Court's opinion, aspect of back wages has to be considered on the basis of the oral evidence of the respondent workman. When the order of termination has been held to be invalid and bad, as a normal consequence of such finding, the workman would become entitled for back wages provided that he proves that he has not been gainfully employed elsewhere inspite of his earnest assiduous efforts to secure job elsewhere. If it is proved by the workman that he has not been gainfully employed elsewhere during the intervening period, then, the onus of proof to prove his gainful employment during the intervening period would be shifted on the employer and it would be necessary for the employer to prove that since the workman has been gainfully employed elsewhere or that he has been doing some miscellaneous work and has been earning something. In the instant case, from the bare reading of the award, it does not appear that there is any such evidence of the respondent workman that he has not been gainfully employed elsewhere during the intervening period inspite of his earnest assiduous efforts. In view of this factual position, according to my opinion, award in so far as it relates to backwages is not sustainable. Even otherwise, the respondent was working as daily rated helper and was being engaged subject to availability of work. Further, the petitioner is a public body and the grant of back wages for such a long period would unnecessarily burden the petitioner. Therefore, according to my opinion, the award in question is required to be modified in respect of back wages. According to my opinion, it would be just and proper to award back wages at the rate of 20 % during the intervening period and to that extent, the award is

required to be modified without disturbing the award of reinstatement with continuity of service. The directions to make payment of such back wages at the penal rate of interest, 18 per cent p.a. is also required to be quashed and set aside since the petitioner has been prosecuting this petition before this Court bona fide.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court in Reference No. 255 of 1987 dated 5th October, 1998 is hereby modified in so far as it relates to back wages. Directions issued by the labour court under the impugned award to make payment of back wages for 18 days each month during the intervening period are hereby set aside and instead of that, it is directed to the petitioner to pay the back wages only at the rate of 20 per cent during the intervening period. Further, the directions to pay arrears of back wages at the rate of 18 per cent p.a. with effect from 1.11.1998 are also set aside. It is clarified that this court has not disturbed the award in so far as it relates to rerinstatement with continuity of service. Rule is made absolute in terms indicated hereinabove with no order as to costs.

At this stage, learned advocate Mr. Mehta for the respondent has submitted that the award in question was made by the labour court on 5th October, 1998 and during the pendency of this petition, the petitioner has neither reinstated the respondent nor has paid the benefits to the respondent under section 17-B of the Industrial Disputes Act, 1947 and, therefore, some suitable directions are required to be issued to the petitioner to implement the award in question as modified by this Court, within some reasonable period.

Considering the request made by Mr. Mehta, it is directed to the petitioner to reinstate the respondent workman in service within one month from the date of receipt of copy of this order . It is further directed to the petitioner to pay the back wages to the respondent workman at the rate of 20 per cent during the intervening period within two months from the date of receipt of copy of the order.It is further directed to the petitioner to pay full wages to the respondent workman from the date of the award in question i.e. 5th October, 1998 till the date of his actual reinstatement within three months from the date of receipt of copy of this order.

1.4.2002. (H.K. Rathod,J.)

Vyas